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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE JOSEPH ESTRELLA,

Defendant and Appellant.

B287434

(Los Angeles County
Super. Ct. No. PA083939)

APPEAL from an order of the Superior Court of
Los Angeles County, Hayden Zacky, Judge. Affirmed.

Katja Grosch, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Margaret E. Maxwell, Supervising Deputy
Attorney General, and Gregory B. Wagner, Deputy Attorney
General, for Plaintiff and Respondent.

Jessica Estrella¹ appeals the trial court's order terminating probation and ordering execution of her suspended four-year state prison term for willful infliction of corporal injury on a person with whom Estrella had a dating relationship. On appeal Estrella contends the court abused its discretion in refusing to reinstate probation, arguing she was guilty only of technical violations of probation that did not implicate public safety and that were the product of her indigency. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Estrella's Plea and Sentence for Willful Infliction of Corporal Injury on a Dating Partner

On July 15, 2015, during an argument with her girlfriend Brittany B., Estrella walked over to the couch where Brittany was sitting, hit her in the face, spit on her, poured a bottle of water over her body, pinned her down and began to choke her with both hands. As Brittany kicked her legs and swung her arms in a panic, Estrella released her chokehold, then tore Brittany's shorts and undergarment and jammed her fingers in Brittany's vagina for 30 seconds. Brittany continued resisting and screaming for Estrella to stop. When Estrella finally ceased the assault, Brittany, hysterical, ran out of the trailer and flagged down a California Highway Patrol officer.

Estrella was charged in a two-count felony complaint with a forcible act of sexual penetration by foreign object (Pen. Code, § 289, subd. (a)(1)(A))² (count 1) and willful infliction of corporal

¹ In November 2016 Estrella informed her probation officer she is transgender and would be living her life as a woman, with the new name Jessica.

² Statutory references are to this code.

injury on a person with whom she had a dating relationship (§ 273.5, subd. (a)) (count 2). Pursuant to a negotiated agreement, on December 29, 2015 Estrella pleaded no contest to count 2, with the understanding she would receive formal probation at the time of sentencing.

On January 29, 2016 the trial court sentenced Estrella to four years in state prison, suspended execution of the sentence and, in accordance with the parties' plea agreement, placed Estrella on formal probation for a period of five years. Count 1 was dismissed.

Among the conditions of probation, Estrella was ordered to serve 180 days in jail; complete a 52-week domestic violence counseling program; comply with a protective order to stay 100 yards from, and have no contact with, Brittany for 10 years, particularly during her probation; make restitution to her victim in an amount and manner to be prescribed by the probation officer; and obey all laws and orders of the court and all rules, regulations and instructions of the probation department. Estrella was informed that, once she enrolled in the domestic violence counseling program, she would have to return to court every 90 days for a progress report.

The trial court advised Estrella, "That prison term, four years, it's been imposed already by me, but it's suspended. Kind of like hanging by wires over your head." The court continued, "I expect that you are going to comply with all of the terms and conditions of probation. Because if you violate, the wires are cut, basically, and it's going to fall on your head and you're going to go down for four years in state prison."

2. *Estrella's Probation Violations for Failing To Comply with the Protective Order and Failing To Perform Community Labor*

On June 14, 2016 Estrella violated the protective order, and thus the conditions of probation, when she was found in the garage of Brittany's home speaking with Brittany; the incident was witnessed by Brittany's mother. The trial court revoked Estrella's probation at a postsentencing hearing in July 2016 after receiving a Los Angeles County Sheriff's Department report regarding the violation. At the August 31, 2016 formal probation violation hearing, Estrella admitted the violation. The court reinstated probation on the same terms, but with the additional condition Estrella perform 15 days (120 hours) of community labor at a rate of two days per month commencing in September 2016. The court also ordered Estrella to return on November 30, 2016 for a hearing on her progress in attending the domestic violence counseling program.

On November 30, 2016 the court admonished Estrella to comply with its prior order to perform community labor, noting Estrella had yet to complete a single day. The court ordered the hearing continued to February 28, 2017 for a progress report on Estrella's compliance with the domestic violence counseling and community labor requirements.

On February 28, 2017 Estrella admitted she had violated the conditions of her probation by failing to comply with the community labor requirement. She still had completed none of the required 15 days of work. The following day the trial court remanded Estrella to custody to serve 15 days in jail in lieu of the 15 days of community labor previously imposed; and on March 15, 2017 it reinstated Estrella's probation on the same terms, but with the additional condition she serve another 30

days in jail. The court also ordered Estrella to appear on June 23, 2017 for the next progress report.

3. The June 23, 2017 Hearing

At the June 23, 2017 hearing the trial court ordered Estrella's probation preliminarily revoked based on a probation report indicating Estrella had failed to report to her probation officer in April and May 2017. The court also observed Estrella had violated the conditions of her probation twice before. Estrella's counsel explained Estrella had lost her home and vehicle and had been staying with friends, who had become tired of providing her rides. Because she was living in the Antelope Valley, it was difficult for Estrella to report to her probation officer in Van Nuys. The court responded that, according to the probation report, Estrella had been told to report in person to the probation office in Lancaster, not Van Nuys, and did not do so.

The court also told Estrella, "Every time that you come to court, I hear excuses. A ton of them." After reading an excerpt from the January 29, 2016 hearing transcript in which it had advised Estrella of the consequences of a probation violation, the court explained, "I have given you two breaks, two violations of probation I have reinstated. But there comes a time in the road, again, where the wire has to be cut." The court stated it would nevertheless "keep an open mind," ordered preparation of a supplemental probation report and set a formal probation violation hearing for July 10, 2017.

4. The July 10, 2017 Hearing

After summarizing the facts of the underlying offense at the July 10, 2017 probation violation hearing, the court stated, "[S]ince the defendant was sentenced on January 29th of 2016, I

have actually really tried to be patient. And there have been several violations. And we will talk about that. My normal course, when there's a prison sentence suspended, frankly, of all of the judges I think in this courthouse, I am the one most likely to impose a prison sentence. But despite that, I kept working, I believe, with the defendant."

The court then described Estrella's probation violation for failing to comply with the protective order, which Estrella had admitted, and stated, "[I]nstead of imposing the prison term, I—upon an admission to a violation, I ordered the defendant to do 15 days of Caltrans or community labor." The court recalled Estrella had subsequently arrived an hour and a half late to court for the November 30, 2016 progress report and remarked, "Despite that, I didn't take any action. I just admonished the defendant to comply with the court's prior order to do the 15 days of Caltrans or community labor, because none had been done, despite the court order." According to the court, at the next progress report on February 28, 2017, "defendant appeared in court once again with zero days of community labor done. Zero. Despite the court's order, and despite the court continuing [the] progress [hearing] on several occasions for that." The court stated Estrella admitted on February 28 she had committed another probation violation.

The court marked as exhibits and took judicial notice of the contents of the probation report filed on June 23, 2017 and the supplemental probation report filed on July 10, 2017. Both of these reports, the court observed, established that Estrella had failed to report to her probation officer as instructed for the months of April and May 2017.

The July 10, 2017 supplemental probation report explained Estrella had called her probation officer after her release from custody on March 20, 2017, advising she was homeless. Her probation officer counseled her to seek assistance from the Department of Social Services for assessment for financial assistance and possible assistance with shelters in her immediate area. Both the June and July 2017 reports indicated Estrella had been provided with information on access to a variety of free and low cost services, including transportation.

The July 2017 report concluded Estrella's "progress on probation thus far has been marginal." It stated, "To [Estrella's] credit, she is participating in her court order[ed] domestic violence counseling and is making efforts to complete the program. However, [Estrella's] at-risk lifestyle, lack of stable housing, income, and transportation appear to have a tremendous effect on [Estrella's] ability to follow through with all terms of her probation." According to the report, Estrella "remains prideful and has refused to follow through with seeking assistance from local social service organizations which could possibl[y] improve her circumstances." The report recommended "the court admonish [Estrella] to contact the financial evaluator to be assessed for her ability to pay; begin making payments towards her outstanding financial obligations and report to probation as instructed. All other terms and conditions to remain the same."

The trial court at the July 10, 2017 hearing found by a preponderance of the evidence Estrella had violated the conditions of her probation by failing to report to probation in April and May 2017. The court observed, "Despite the accommodations made by the probation officer to have the

defendant report to the Lancaster area office, [Estrella] failed to do so.” Estrella’s counsel informed the court, “[T]he last three months have been a hardship for Ms. Estrella. She did lose her home. She also lost her vehicle.” The court told Estrella, “I am compassionate with your situation. I am sure you are going through a lot of stuff. I understand it. But that’s not an excuse to not do or follow through with court orders. And this isn’t the first time. . . . I have already reinstated probation twice. . . . All I can say is, I don’t think probation is an option anymore.” The court ordered execution of Estrella’s previously suspended four-year state prison sentence.

Estrella apologized to the court and stated, “It’s not a big deal for me to go and see the probation officer.” When asked by the court why she had failed to comply with her probation conditions, Estrella replied, “Sir, all I can do right now is promise to you that no matter what goes on in the future, I will make every single probation hearing. I will make every single visitation to my probation officer. I will make every single domestic violence class.” The court explained it had provided Estrella with “repeated chances” and could not “do it anymore.”

DISCUSSION

1. *Governing Law and Standard of Review*

The court may “revoke and terminate” probation “if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation . . . officer or otherwise that the person has violated any of the conditions of” probation. (§ 1203.2, subd. (a); see *People v. Leiva* (2013) 56 Cal.4th 498, 504-505 [same]; *People v. Urke* (2011) 197 Cal.App.4th 766, 773 [“[p]robation is not a matter of right but an act of clemency”; ““[w]hen the evidence shows that a

defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period”].³ “In the context of section 1203.2,” “[a]n admonition to a court to act in accordance with ‘the interests of justice’” serves merely “to invoke the sound discretion of the trial court.” (*People v. Angus* (1980) 114 Cal.App.3d 973, 986.)

If the trial court revokes and terminates probation in a case where judgment was pronounced and its execution suspended, “the court may revoke the suspension and order that the judgment shall be in full force and effect.” (§ 1203.2, subd. (c).) This provision “gives the court discretion, on revocation and termination of probation, either (1) to revoke the *suspension of sentence* and commit the probationer to prison for the term prescribed in the suspended sentence, or (2) to decline to revoke the suspension or to order confinement.” (*People v. Howard* (1997) 16 Cal.4th 1081, 1094.) The trial court thus retains discretion, even after finding cause to revoke and terminate probation, to reinstate probation. (See *People v. Medina* (2001) 89 Cal.App.4th 318, 322 [referring to “the court’s power, upon finding cause to revoke and terminate probation, to reinstate and continue a defendant on probation thereafter”].)

We review a trial court’s decision to revoke and terminate probation for abuse of discretion. (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 443 [trial courts have “very broad discretion in determining whether a probationer violated probation”]; *People v.*

³ Probation, however, “shall not be revoked for failure of a person to make restitution imposed or as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay.” (§ 1203.2, subd. (a).)

Michael W. (1995) 32 Cal.App.4th 1111, 1119.) The decision whether to revoke suspension of sentence and commit the probationer to prison or instead to reinstate probation is also reviewed, as with all sentencing decisions, under the abuse of discretion standard. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909; see *People v. Noyan* (2014) 232 Cal.App.4th 657, 663 [reviewing trial court’s decision not to reinstate probation for abuse of discretion].)

Under the abuse of discretion standard the defendant must establish “the trial court’s decision was so erroneous that it “falls outside the bounds of reason.”” (*People v. Miracle* (2018) 6 Cal.5th 318, 346; see *People v. Urke, supra*, 197 Cal.App.4th at p. 773 [““[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .””; “the burden of demonstrating an abuse of the trial court’s discretion rests squarely on the defendant”].) “An abuse of discretion will be “established by ‘a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’”” (*Miracle*, at pp. 346-347.)

A review of the trial court’s factual findings is limited to a determination whether they are supported by substantial evidence. (*People v. Clancey* (2013) 56 Cal.4th 562, 578 [under abuse of discretion standard, “we ask whether the trial court’s findings of fact are supported by substantial evidence, whether its rulings of law are correct, and whether its application of the law to the facts was neither arbitrary nor capricious”]; *People v. Ceja* (1993) 4 Cal.4th 1134, 1138 [the role of an appellate court in reviewing for sufficiency of evidence is “limited” to determining

whether the record discloses substantial evidence supporting the judgment being reviewed].) Under the substantial evidence standard “[w]e presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.)

2. *The Trial Court Did Not Abuse Its Discretion in Declining To Reinstate Probation and Imposing Estrella’s Suspended Four-year State Prison Term*

Although Estrella in her opening brief refers interchangeably to the trial court’s decisions to summarily revoke probation and to terminate probation and impose Estrella’s suspended four-year state prison term, her sole contention on appeal is that the court abused its discretion in declining to once again reinstate probation following the contested probation violation hearing on July 10, 2017.⁴ None of Estrella’s challenges to the court’s order has merit.

⁴ Estrella does not argue, nor could she, that the court abused its discretion in summarily revoking probation on June 23, 2017 because she had failed to report to the probation officer, as required, in April and May 2017 (see § 1203.2, subd. (a) [violation of a condition of probation is a ground for summary revocation of probation]; *People v. Leiva, supra*, 56 Cal.4th at p. 505), or in finding a probation violation following a formal hearing based on her failure to report to the probation officer as confirmed in the June 2017 probation report and July 2017 supplemental probation report.

To be sure, Estrella’s failure to report to her probation officer in April and May 2017, standing alone, might be an insufficient basis for declining to reinstate probation and imposing the stayed state prison term. But those violations, coupled with her previous violations for failing to comply with the protective order and to complete community labor, provided ample support for the court’s decision. (See *People v. Jones* (1990) 224 Cal.App.3d 1309, 1316 “[d]efendant’s previous failures to comply with the terms of probation amply supports” the “conclusion that probation was inappropriate because defendant was no longer a suitable candidate,” which “constitutes a sufficient reason for” declining to reinstate probation after revocation]; see also *People v. Bagley* (1963) 218 Cal.App.2d 809, 811 [affirming revocation of probation and ordering execution of previously imposed sentence; “[f]ailure to make the required reports [to the probation officer] was sufficient cause for the revocation”].)

Emphasizing that she had lost her home and vehicle as a result of her indigency, Estrella argues the court improperly failed to consider the circumstances of her recent probation violations, as indicated by its statement, “My normal course, when there’s a prison sentence suspended, frankly, of all of the judges I think in this courthouse, I am the one most likely to impose a prison sentence.” Estrella quotes the trial court selectively and out of context, ignoring the court’s next comment, “But despite that, I kept working, I believe with the defendant,” as well as its earlier statements, “And since the defendant was sentenced on January 29th of 2016, I have actually really tried to be patient. And there have been several violations.”

Rather than constituting a “reflexive reaction” to her violations, the record demonstrates the trial court’s decision was reasoned and deliberate, with appropriate consideration of Estrella’s circumstances. Indeed, at the July 10, 2017 hearing the court stated, “I am aware of the defendant’s claimed hardships. The fact that defendant claims that she is suffering from homelessness and is a transient and is couch surfing, going place to place, I am aware of all of that.”

Estrella also argues her failure to pay restitution and her reporting violations constitute mere technical violations that neither raise concerns over public safety, as required by *People v. Monette* (1994) 25 Cal.App.4th 1572, 1575 (*Monette*), nor evidence a willful violation, as the Attorney General acknowledges is required by *People v. Cervantes* (2009) 175 Cal.App.4th 291, 295. As shown by the record, however, the trial court did not base its decision on Estrella’s failure to pay restitution. And her contention her reporting violations were not willful is belied by her statement at the July 10, 2017 hearing, “It’s not a big deal for me to go and see the probation officer.” Indeed, there is no evidence she took advantage of information provided to her regarding free or low-cost transportation or advised her probation officer of any reason she could not do so. The July 2017 supplemental probation report states she refused to seek assistance from local social service organizations. Similarly, despite having been advised she could report to the probation office in Lancaster after she had moved to the Antelope Valley, she still failed to comply with her reporting obligation.⁵

⁵ To the extent Estrella contends on appeal that Lancaster was still too far from where she was staying, there is no evidence she notified her probation officer of this problem.

Moreover, even if she did not have access to a car, there is no evidence she did not have access to a telephone (indeed, her telephone calls on other occasions indicate she did have such access), and yet she did not even report to her probation officer by telephone for the entire month of April 2017. Substantial evidence thus supports an implied finding her reporting violations were willful.⁶

Estrella's reliance on *People v. Zaring* (1992) 8 Cal.App.4th 362 to support her argument the trial court abused its discretion in refusing to reinstate probation is misplaced. In *Zaring* it was determined the trial court had abused its discretion in finding a willful violation of probation, terminating probation and committing the defendant to state prison where the defendant, due to "a last minute unforeseen circumstance," was 22 minutes late to a court hearing held 35 miles from the defendant's home. (*Id.* at pp. 367, 379.) Specifically, the defendant testified the unexpected illness of her babysitter the morning of her court appearance had disrupted her arrangements to travel to the courthouse in a timely manner. Because "[n]othing in the record support[ed] the conclusion that [the defendant's] conduct was the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court," the court of appeal reversed and remanded the trial court's sentencing decision. (*Id.*

⁶ That the trial court stated it was "compassionate with [Estrella's] situation" and it was "sure [Estrella was] going through a lot of stuff" does not contradict an implied finding of willful reporting violations. Although it may have found Estrella's general claim of indigence otherwise credible, the trial court effectively rejected as not credible her argument her indigence was the reason for her noncompliance with her reporting requirements.

at p. 379.)

Estrella is also mistaken in relying on *Monette, supra*, 25 Cal.App.4th 1572 to argue the trial court abused its discretion in basing its decision on her reporting violations because they do not implicate concerns for public safety. The court in *Monette* explained, “In placing a criminal on probation, an act of clemency and grace [citation], the state takes a risk that the probationer may commit additional antisocial acts. Where probation fails as a rehabilitative device, as evidenced by the probationer’s failure to abide by the probation conditions, the state has a great interest in being able to imprison the probationer without the burden of a new adversary criminal trial.” (*Id.* at p. 1575.) The court then stated, “The role of the trial court at a probation revocation hearing is not to determine whether the probationer is guilty or innocent of a crime but whether he can be safely allowed to remain in society.” (*Ibid.*) According to *Monette*, therefore, a finding the probationer cannot be “safely allowed to remain in society” may be evidenced by the probationer’s failure to abide by the conditions of probation. Here, as discussed, Estrella violated the conditions of her probation not once, but on multiple occasions.

Moreover, one of Estrella’s prior violations was her failure to abide by the stay-away order imposed for Brittany’s protection. Estrella’s contention the trial court should not have considered her previous probation violations in deciding whether to reinstate probation is simply incorrect. (See *People v. Jones, supra*, 224 Cal.App.3d at p. 1316.)⁷

⁷ Estrella’s contention her prior violations were “cured” when she served several days in jail betrays a fundamental misunderstanding of the nature of probation: She had been

Finally, Estrella contends the trial court abused its discretion by failing to follow the probation department's recommendation that she be allowed to remain on probation. A trial court is not bound by the recommendations of the probation report. (*People v. Warner* (1978) 20 Cal.3d 678, 683 ["having considered [the probation report and its recommendations], the court 'may reject *in toto* the report and recommendation of the probation officer'"]; *People v. Downey, supra*, 82 Cal.App.4th at p. 910.) Indeed, a court may even abuse its discretion in granting probation in accordance with a probation report's recommendation if probation is unwarranted by the circumstances. (See *Warner*, at p. 683.)

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.

granted probation from the outset as an act of clemency in the express expectation she would commit no probation violation, an expectation Estrella repeatedly disappointed. The trial court explained it had been lenient with regard to her previous violations, having given her two prior "breaks" by allowing her to continue with probation (after a relatively brief period in jail), rather than committing her to prison.